

the parties, Rule is finally heard today.

The petitioners, who were the original defendants, have questioned the legality of the order passed below their application Exhibit 140 in Special Civil Suit No.275 of 1981, thereby rejecting the petitioners' application for amendment in the written statement under Order 6 Rule 17 of the Code of Civil Procedure.

The respondent-plaintiff instituted the aforesaid Special Civil Suit No.275 of 1981 against the petitioners herein for recovery of Rs.1,40,000/- in the Court of Civil Judge (Senior Division), Surat. The said suit was based on a promissory note dated September 30, 1980. By the written statement at Exhibit 33, the defendant, the petitioner No.1 herein, contended, inter alia, that the defendants were never in need of money nor they executed promissory note as pleaded by the plaintiff. It was alleged that the plaintiff-respondent was doing money lending business without proper licence.

On the basis of the pleadings of the parties, the trial court raised the issues. The evidence of the plaintiff came to be recorded and was concluded. Thereafter, the evidence of the petitioners was also over in the trial court. At that belated stage, the petitioners gave the application Exhibit 140, seeking amendment in the written statement to the effect that the petitioners were marginal farmers and the Court has no jurisdiction to entertain the suit. By the written objections at Exhibit 143, the plaintiff contended that the defendants are trying to delay the said proceedings having raised objection with regard to the jurisdiction of the Court for the first time in the application after conclusion of recording of the evidence of the parties.

The learned Third Joint Civil Judge (Senior Division), Surat, Camp at Bardoli, by the impugned judgment and order dated 3rd August, 1996, rejected the amendment application Exhibit 140. It is against this impugned judgment and order, the petitioners have approached this Court by way of revision application under Section 115 of the Code of Civil Procedure.

I have heard the learned Advocates appearing for both the parties. Mr.D.R. Dhimar, the learned Advocate for the petitioners, submits that the learned Judge of the trial court committed a jurisdictional error in disallowing the amendment as the amendment could be

granted at any stage of the suit. He also submitted that if the amendment as prayed for is allowed, the plaintiff was not likely to suffer any prejudice and that there was no change in the nature of the defence raised by the petitioner-defendants. Mr.Dhimar also cited several authorities in support of his contentions. I have dealt with the said authorities hereinbelow.

It is true that the amendment under Order 6 Rule 17 of the Code of Civil Procedure can be allowed at any time in the suit proceedings or even at the appellate stage. However, the Court may examine whether such amendment sought is bona fide or is with a view to protract the proceedings of the suit. In the instant case, admittedly, the amendment was sought after a lapse of about 13 years, particularly when the recording of evidence of both the parties was over. The defendants did not prima facie show any documentary evidence to show the holdings of the land so as to claim the status of marginal farmers. Apart from that, the plea of the jurisdiction of the Court is required to be raised at the earliest possible opportunity as is contemplated by Section 21 of the Code of Civil Procedure. Section 21 of the Code, inter alia, provides that no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice. In the present case, the petitioners have raised the objection as to jurisdiction at a belated stage, i.e. after recording of the evidence of the parties.

Mr. Dhimar relied upon the case of Jayendrasinh Lalubha Jadeja v. District Superintendent of Police, Surat and others, reported in 1997(2) Current Civil Cases 108. It was held in that case that the merits of allegations on amendment application need not be gone into by court while deciding the question of grant of amendment. However, whether the amendment is bona fide or otherwise or the plea raised by the party is supported by any prima facie evidence or otherwise can be enquired into to ascertain whether the party seeking amendment is not making any attempt to delay the proceedings. In the present case, there is nothing on the record to show except the bare allegations of the defendants that they were marginal farmers. It is, therefore, doubtful whether the plea raised by the defendants is bona fide or not. Under the circumstances, the trial court was justified in rejecting the proposed amendment.

Mr.Dhimar also relied on the decision of M/s. Ganesh Trading Co. v. Moji Ram, reported in AIR 1978 SC 484, wherein the Supreme Court has held, dealing with the provisions relating to the pleadings and amendment thereof under Order 6 Rule 17 that in a suit for recovery of money due under a promissory note filed by a Firm though a partner, the amendment of plaint on the ground that the partnership firm already stood dissolved on the date of filing the suit and that the suit is instituted by one of the partners of a dissolved firm could not be refused. It did not alter the cause of action or the character of the suit nor did change the identity of the plaintiff, who remained the same. It only brought out correctly the capacity of the plaintiff suing. The Supreme Court, therefore, held that the amendment should have been allowed in these circumstances. However, in the present case, the facts are quite different and the ratio laid down in the aforesaid Supreme Court judgment cannot be made applicable in the facts and circumstances of this case.

Mr.Dhimar then placed reliance on the case of M/s. Jawarmal Ramkaran v. M/s. Pari Keshavlal Jamnadas, reported in 1989(2) GLR 927. It was held that as regards the objects of pleadings and amendment of pleadings, there appears to be some misconception and confusion in the minds of certain Judicial Officers presiding over the lower courts. Therefore, it is necessary to clear the same. Law regarding pleadings forms part of procedural law. Procedure is something designed to facilitate justice and further its ends. Procedural law is not a penal enactment. It is not a thing designed to trip people up. Compliance with the procedural law is not an end in itself. The ultimate object is to do justice, i.e. adjudication of the issues involved in a matter. However, justice is to be administered to both the parties. In the guise of procedure, no party can raise any dispute, including that of seeking amendment at any belated stage without having any bona fide reason in respect of the proposed amendment. The time factor of seeking amendment become relevant while examining the bona fides or mala fides of the party seeking such amendment. If there is no material prima facie shown to the Court in support of the amendment having regard to the facts and circumstances of the case, the Court may refuse to grant amendment. It cannot be held that in each and every case of the defendant, the amendment asked for is required to be granted. This will be a preposterous approach. In the facts and circumstances of the case, I am of the view

that the trial court has rightly rejected the petitioners' application for amendment.

In the above view of the matter, the application fails. Rule is discharged. There shall, however, be no order as to costs.

(apj)